

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STUART COLMAN,

Plaintiffs,

v.

THE CITY OF SEATTLE, *et al.*,

Defendants.

CASE NO. C05-0754RSM

ORDER DENYING MOTION
TO COMPEL DEPOSITION

This matter comes before the Court on defendants' Motion to Compel the Resumption of Plaintiff Stuart Colman's Deposition and Extend Discovery Cut-Off. (Dkt. #32). Plaintiff appeared for his deposition on March 1, 2006, and testified for approximately six hours. At the request of plaintiff's counsel, the parties concluded the deposition early. Plaintiff has agreed to resume the deposition on March 13, 2006, the same day plaintiff's wife is being deposed, as plaintiff agrees that defendants have a right to continue his deposition. However, plaintiff argues that he should be required to attend for only the remaining one hour of the seven hour time allotted under Rule 30 of the Civil Rules of Civil Procedure. *See* Fed. R. Civ. P. 30(d)(2). Plaintiff further argues that defendants' motion should be denied because it is untimely. Defendants assert that more time is necessary for a full and fair deposition of plaintiff, and ask this Court to compel plaintiff to appear for as much time as is necessary to complete his testimony.

1 Having reviewed defendants' motion, plaintiff's response, defendants' reply to that
2 response, and the remainder of the record, the Court hereby ORDERS:

3 (1) Defendants' Motion to Compel (Dkt. #32) is DENIED. This Court's Scheduling
4 Order set forth the specific deadlines for pre-trial motions. (Dkt. #9). In that Order, the Court
5 set February 10, 2006, as the deadline for all discovery-related motions. (Dkt. #9 at 1). The
6 Order also provides notice to the parties that the deadlines are firm, and will be altered only for
7 good cause shown. (Dkt. #9 at 1). The Court specifically notes that failure to complete
8 discovery will not be recognized as good cause. (Dkt. #9 at 1).

9 Defendants filed the instant motion to compel on March 6, 2006, nearly one month after
10 the discovery motion deadline had passed. In the motion, defendants fail to acknowledge their
11 failure to comply with the deadline, and fail to present any argument as to why the Court should
12 excuse that failure and consider the untimely motion. In addition, in their Reply, defendants
13 continue to ignore their failure to comply with the discovery motion deadline, and focus instead
14 on the discovery cut-off date, arguing that their motion should be accepted by the Court
15 because it was filed before the discovery deadline.

16 Notwithstanding the fact that it is not appropriate to raise an issue for the first time in a
17 reply brief, *see, e.g., Bazuaye v. INS*, 79 F.3d 118, 120 (9th Cir. 1996) (citing *Eberle v. City of*
18 *Anaheim*, 901 F.2d 814, 818 (9th Cir. 1990)); *Thompson v. Commissioner*, 631 F.2d 642, 649
19 (9th Cir. 1980), the Court notes that defendants erroneously rely on Local Rule CR 16(f) in
20 support of their argument that their motion is timely. Defendants assert that Local Rule CR
21 16(f) allows for a motion to compel up until 120 days before trial. While the rule so states,
22 defendants conveniently ignore the language at the outset of the Rule that states such a deadline
23 applies "unless otherwise ordered by the court." Local Rule CR 16(f). In the instant case, the
24 Court has set an earlier deadline of February 10, 2006.

25 Accordingly, the Court finds that defendants have not shown good cause for an order
26 compelling the resumption of Stuart Colman's deposition for an amount of time longer than the

1 one hour he concedes is required. The Court also denies defendants' request to extend the
2 discovery deadline to accommodate that deposition.

3 (2) The Clerk shall direct a copy of this Order to all counsel of record.

4 DATED this 21 day of March, 2006.

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6 RICARDO S. MARTINEZ
7 UNITED STATES DISTRICT JUDGE
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